



Transcript of **Bryan Flores**

Wednesday, July 8, 2020

Nicholas McElroy v. Courtney Ajinca Events LLC

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Reference Number: 93551

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 NICHOLAS McELROY, an individual,)
5 and BRYAN FLORES, an individual,)
6 Plaintiffs,)

7 vs.

8 COURTNEY AJINCA EVENTS, LLC,)
9 a North Carolina limited)
10 liability company, and COURTNEY)
11 AJINCA, an individual,)

Defendants.)
_____)

) CIVIL ACTION FILE
) 1:19-cv-05094-SDG

12
13 The deposition of BRYAN FLORES, taken on
14 behalf of the Defendants, pursuant to the
15 stipulations set forth herein, before Carla J.
16 Hopson, RPR, Certified Shorthand Reporter, at
17 3017 Bolling Way, NE, Atlanta, Georgia, on the
18 8th day of July, 2020, commencing at 4:18 p.m.
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18

19 ALSO PRESENT:

20 Courtney Ajinca

21 Nicholas McElroy

22

23

24

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* * * * *

MR. BARNES: This is the deposition of Bryan Flores taken for all purposes allowable under federal and state law. And pursuant to agreement by counsel, we agree to waive all objections except to the form of the question until the time of trial or first use.

MS. SPERRY: Agreed.

MR. BARNES: All right. If you would swear in the witness.

THEREUPON,

BRYAN FLORES,
having been first duly sworn, was examined and testified upon his oath as follows:

CROSS EXAMINATION

Q (By Mr. Barnes) Would you state your name for the record, please.

A Bryan Flores.

Q Okay. How old are you, Mr. Flores?

A I just turned 35.

Q Thirty-five.

A Yes, sir.

Q Okay. And what's your address?

A 239 Grant Street, Unit 134. I'm sorry.
164. Atlanta, Georgia 30312.

1 Q Okay. What's your highest level of
2 education?

3 A I have an associate's degree in computer
4 science.

5 Q From where?

6 A Gwinnett Tech.

7 Q And who do you currently -- are you
8 currently employed?

9 A I started my own business. I just moved
10 back from Peru.

11 Q Okay. So what business did you start?

12 A Photography and videography. Well,
13 restarting it.

14 Q Restarting it. Okay. So when were
15 you -- how long were you in Peru?

16 A Six months. October through -- I got
17 repatriated in April.

18 Q Okay. All right. Previous -- so that's
19 been your sole employment for the past six months
20 was --

21 A Yeah. I moved to Peru to start doing --
22 well, a YouTube show. So I saved up money from the
23 job I had prior, moved down to Peru to start doing
24 YouTube videos and raise awareness and then for
25 filming and photography for clients down there.

1 Q Okay. In the past five years any
2 arrests for anything?

3 A No.

4 Q Have you ever been in any other
5 lawsuits?

6 A I was in a class action lawsuit with a
7 restaurant group years ago, probably maybe a decade
8 ago. I was a manager at a restaurant and I was
9 putting myself through school at Gwinnett Tech. And
10 the company -- the restaurant was, like, not paying
11 out overtime, and there was an attorney who got a
12 bunch of us in a class action.

13 I never heard any outcome or anything
14 from that, so -- but, yeah, that was the only thing.

15 Q Did you -- have you ever been deposed
16 before?

17 A No.

18 Q Okay. So what's your relationship to
19 Mr. McElroy?

20 A Friends, you know, photography
21 colleagues.

22 Q Okay. How many -- do you have any
23 business relationship with him?

24 A I mean, we've done some work together
25 collaboratively.

1 Q Okay. So how many times or how many
2 jobs?

3 A A handful of weddings -- I mean, not
4 even a handful of weddings. A couple of weddings
5 and then the two -- the two projects that I can
6 remember that also included Night Owl.

7 Q That also included what? I'm sorry.

8 A Night Owl.

9 Q Night Owl. Okay. So with your -- for
10 those jobs with Mr. McElroy, did you have contracts,
11 or what were -- did you keep work under the same
12 agreement, or what was -- what were the terms of
13 those jobs?

14 A Well, weddings were -- you know, he
15 sends all the photos to me. Usually I edit them.
16 You know, I hired him to be a second shooter for a
17 wedding.

18 Q What about -- what's your relationship
19 with George Barron Fox?

20 A A friend, the same. A friend, a
21 creative friend.

22 Q Do you have any business with --

23 A He's under Night Owl, so I guess
24 technically, yes.

25 Q When you say he's under Night Owl, what

1 do you mean?

2 A He's part of that organization.

3 Q Okay. Do you have any idea what his
4 role is?

5 A No clue.

6 Q Okay. And what -- what is Night Owl?

7 A A post house. They do video editing.

8 Q Video editing.

9 A Uh-hmm.

10 Q Okay. Is that -- do they do anything
11 else?

12 A No. I mean, not under their umbrella.
13 They're just a post house.

14 Q Just a post house. So would a post
15 house have any reason to have cameras laying around?

16 A Well, sure. I mean, you're editing, so
17 there would definitely be, you know, cameras laying
18 around.

19 Q But, I mean, I guess -- I guess what I'm
20 trying to get to is if you -- normally if you
21 call Night -- if I called Night Owl today and said,
22 hey, will you video my daughter's soccer game, would
23 they say, no, we don't do that kind of stuff?

24 A They could say we could probably
25 facilitate it, I guess. I don't know. I don't know

1 what they would say.

2 Q Okay. Fair enough. So let's start at
3 the beginning with the facts relating to this
4 lawsuit. So at some point I presume it's Mr.
5 McElroy contacts you and says, hey, I have an
6 opportunity for you for the -- to photograph Cynthia
7 Bailey's engagement.

8 A Well, I don't know if he mentioned her
9 per se. But, I mean, he did ask me to come along
10 and help shoot an event.

11 Q So do you remember when that was?

12 A I think it was the day of or the day
13 before. I'm not really sure. It was so long ago.

14 Q And that was the first that you heard
15 of this job, the engagement event?

16 A It was.

17 Q Okay. So what happens then? Did you
18 ever -- first of all, does he send you a text? Does
19 he email you? Does he call you?

20 A I don't know.

21 Q Do you remember?

22 A I'm not sure.

23 Q You're not sure. So what happens next?
24 He gets in touch with you and says -- says what?

25 A Once again, I think just "we have an

1 event to shoot, you know, do you want to come
2 along," you know.

3 Q Okay.

4 A This is very vague by the way. I'm not
5 really too sure. I mean, obviously this is -- I
6 don't -- I haven't -- it was so long ago, so ...

7 Q Okay. So then you -- presumably you
8 said, yes, I'll do it?

9 A Yeah.

10 Q So what were the terms of the deal?

11 A He mentioned that, you know, it was --
12 you know, we were going to be taking photos of an
13 event and that, you know, these could be used, you
14 know, during social media -- for social media. And
15 that was pretty much it.

16 I said, okay, cool. I like -- I like
17 working. I like doing what I do.

18 Q So when did he -- when did he mention --
19 what did he say he was going to pay you?

20 A I don't remember. I didn't even -- I
21 don't know.

22 Q Do you remember what you did get paid?

23 A I'd have to look. I'd have to see
24 what -- because I don't even know the means in which
25 he paid me. I think it might have been cash. I'm

1 not sure.

2 Q Okay. So you're -- so he says -- you
3 work out a deal for payment, you don't remember what
4 the payment arrangement was, but you're going to go
5 and you're going to shoot some photos.

6 How long? Did he tell you how long you
7 would be there?

8 A No. This was just -- it was an event.
9 We showed up, and I was just kind of committed to it
10 at that point.

11 Q What's a typical -- have you done other
12 events like that before?

13 A Not like that, no.

14 Q Okay. Have you -- have you photographed
15 people's -- well, strike that one.

16 Okay. And what was your understanding
17 of why the -- this engagement was being
18 photographed?

19 A I think there was mention of like some
20 sort of TV show, that there was like someone
21 that's -- it was like an event. I think it was some
22 sort of creative event?

23 Q Okay. But where were your -- the
24 pictures you were taking, who were they going to?
25 Who -- what was your understanding of who they were

1 going to?

2 A Well, I knew that it was -- I'm sorry --
3 Courtney that had us coming out, I guess, through
4 the conversations or communications that she had
5 with Nick. I was just -- like I said, just coming
6 out to help him, you know, to take photos and some
7 video.

8 Q Okay. So you were going to take some
9 photos and do some video. And what were you going
10 to do with those photos and video?

11 A Well, at one point Courtney came up to
12 me right after the engagement proposal and, you
13 know, asked me if I could edit these quickly and get
14 them to her.

15 And I happened to have my MAC there, so
16 I started editing them. And, you know, I airdropped
17 them to her.

18 Q Okay. And what was your
19 understanding of where they were going?

20 A I understood they were just going to be
21 used for social media.

22 Q What do you mean by social media?

23 A Facebook, Instagram, Twitter, I guess
24 anything that constitutes social media.

25 Q Okay. Would it have made a difference

1 to you if they were being used for something else?

2 A I would have definitely liked to know,
3 yeah, for sure.

4 Q Okay.

5 A Made aware.

6 Q But why would you like to know?

7 A Because it's my work. It's my passion.
8 It's what I do. I like to know where my work is
9 going.

10 Q So you'd like to see the -- you know,
11 like to see where it went?

12 A Sure.

13 Q So if -- if Nick called you up and said,
14 hey, I got this job, we're going to take the
15 pictures and we're going to put them up in a
16 billboard in Times Square, would that have changed
17 your mind about doing the job?

18 A I would have asked for a lot more money.

19 Q Okay. And why is that?

20 A Well, it just depends on the situation.
21 If you tell me a billboard, I may have to rent a
22 Hasselblad. I might have to rent him a MIA that has
23 like --

24 Q I'm sorry. You might have to what?

25 A Rent a Hasselblad or a MIA, a type of

1 camera that's designed to use for that, you know.

2 So therefore, there would be more cost. You have to
3 have more skill to use a camera like that, so --

4 I mean, yeah, there's a lot of different
5 factors; but sure.

6 Q What if he just said, give me -- you
7 know, come on over with the equipment you have, take
8 some pictures for us and we'll -- you know, they'll
9 do with them what they want?

10 A Super vague. My contracts normally
11 state that I have full copyright.

12 Q Okay. So do you have a -- did you have
13 any contract with CAE, with Courtney Ajinca Events?

14 A No.

15 Q Did you have any contract with Courtney
16 herself?

17 A No.

18 Q Did you have any contract with Mr.
19 McElroy?

20 A I mean -- I mean, just the understanding
21 that I was going to come out and take some photos
22 and they were going to be used for social media.

23 Q So what happens? You speak with Mr.
24 McElroy, make this deal. And then what happens
25 next?

1 A I come out.

2 Q Okay. When you get there, who is there?
3 Who comes with you?

4 A I think I drove myself, I guess. I'm
5 usually pretty -- pretty independent when it comes
6 to getting places. I like to drive.

7 Q Okay.

8 A So if I had to guess, I probably drove
9 myself.

10 Q Okay. So you drove, you got there.
11 From your -- Mr. McElroy is there, or did he get
12 there later?

13 A I'm not sure.

14 Q So who's your -- who's with you, meaning
15 like your group? Mr. McElroy, you. Anyone else?

16 A And people from Night Owl.

17 Q Okay. Who was there from Night Owl?

18 A I know Danny for sure. Maybe George.

19 Q What were they -- what were they doing
20 there?

21 A Watching our gear for the most part.
22 They would -- we had a, you know, little area set
23 up. There was a lot of people. There was -- it was
24 open to the public. It was like an event center but
25 attached with like little shops. I don't know how

1 to describe it, but --

2 Q Sure.

3 A Yeah, there were watching the

4 equipment --

5 Q Okay.

6 A -- for the most part.

7 Q So you're there. What are you doing
8 while you're there?

9 A Videoing and photographing.

10 Q And what are you videoing and
11 photographing?

12 A We were told to not video anything other
13 than like decor and stuff first before like the
14 actual event started. And then once the event
15 started, we were told not -- we were not allowed to
16 have video. And then we were given permission to
17 take photos during the engagement.

18 Q Okay. So who told you not to take any
19 video?

20 A I don't recall. I think it was some
21 producer or someone that had a walkie-talkie that
22 seemed like he was in charge.

23 Q Okay. Was that the same person who gave
24 you permission to take the photos?

25 A I believe so. It was -- it was a really

1 weird day because there was so much going on, so
2 many people walking around. I mean, I'm -- it's
3 kind of hard to recollect.

4 Q So you take the photos. The event --
5 what causes you to stop taking photos? Does the
6 event end? Does somebody --

7 A I believe the event ended, but there was
8 still people hanging around.

9 Q So what do you do then?

10 A Probably got in my car and went home.
11 After a shoot I'm pretty tired.

12 Q Well, you said that at some point you
13 airdropped some photos. So when did that happen?

14 A I think as the event was wrapping up.

15 Q As it was wrapping up. Did you take any
16 more photos after that?

17 A I maybe took some drum footage when I
18 was leaving.

19 Q So then you said after the event you got
20 in your car and went -- you think you went home?

21 A Yeah, probably. Either home or back --
22 yeah. I don't know.

23 Q Okay. Did you sent out any other photos
24 that night?

25 A I probably uploaded them to my SmugMug

1 account.

2 Q Okay.

3 A And I believe -- I'm sure at some point
4 I probably sent that link out to Nick.

5 Q Okay. So why did you send the link to
6 Nick?

7 A Just to share the photos that I had
8 taken so he could see them.

9 Q What did you think that he was going to
10 do at that point?

11 A What we had discussed, you know,
12 distribute them for the client for use on social
13 media.

14 Q Distribute -- okay. Do you know if he
15 actually did send them?

16 A I'm not sure what Nick has done on the
17 phone or not. I completed my duty at that point. I
18 kind of just -- when I'm done with a job, I usually
19 just finish and, you know, continue on looking for
20 more work.

21 Q Okay. So when you took the photos did
22 you put any watermarks on them?

23 A At that time, no, because it was just so
24 quickly that she asked for them while I was there,
25 so --

1 Q Was there any discussion about what they
2 could or couldn't be used for?

3 A Not with her, no, because I had already
4 had that, like, prior verbal discussion with Nick.

5 Q So you made a deal -- so your deal with
6 Nick was social media.

7 A Well, that's usually like our MO. Like
8 it was just -- that's how it was mentioned to me, it
9 was going to be used in social media.

10 Q Okay. So Nick is the one -- did
11 Courtney ever tell you it was going to be social
12 media?

13 A I didn't speak to her in regards to
14 that. I -- she did ask me for like a photo that she
15 had with Cynthia and she wanted it because it was
16 personal to her, so

17 Q So what about, did you ever -- CAE,
18 which is Courtney's company -- you know, if it's the
19 same to you --

20 A Okay.

21 Q Did you have any conversation with
22 anyone at CAE --

23 A This is -- today is the first day I've
24 heard of CAE as a whole. But I -- no. So I don't
25 know.

1 Q Okay. So photos -- so the deal -- the
2 understanding you had for the photos was based on
3 what Mr. McElroy told you?

4 A (Nodding.)

5 Q And you distributed the phones to Mr.
6 McElroy based on the deal between you and Mr.
7 McElroy?

8 A Well, I originally distributed them to
9 her via airdrop.

10 Q Okay.

11 A Based on the fact that, you know, she
12 was the point of contact, she was the one that
13 hired, you know, us to do what we were doing. So I
14 didn't feel, you know ...

15 Q Okay. She never said, oh, social
16 media -- she never said anything about, I know this
17 is for social media only?

18 A No, not that I can recall.

19 Q Okay. So did you give Mr. McElroy any
20 rights, licenses, or anything in any of those
21 photos?

22 A No, I maintain all that.

23 Q Okay. And how would he know that?

24 A Well, usually it's whoever snaps the
25 photos owns the rights to the photos.

1 Q Okay. And what makes you -- do you have
2 any idea why Mr. McElroy would believe that that was
3 the deal for this job?

4 A Well, yeah, that's how he explained it
5 to me. It was going to be used for social media
6 purposes.

7 (Exhibit Number 2 was marked.)

8 Q Okay. So let's look at Exhibit 2, if
9 you can go through that. Those were exhibits that
10 were attached to the lawsuit. And what I'd like you
11 to do is pull out the ones that you took.

12 A (Complies.)

13 Q So I'm going to mark these photos that
14 you've pulled out. The first one is Page 7 of 67.
15 I'm going to mark that one F-1. The next one is
16 Page 8 of 67. I'm going to mark that one as F-2.

17 The next one, Page 9, I'm going to mark
18 that one as F-3. The next one is Page 10, F-4. And
19 the last one is Page 11, and I'll mark that as F-5.

20 Okay. So we'll -- lay these out there.
21 And I don't know if you had --

22 You came in kind of in the middle of Mr.
23 McElroy's deposition, so I'll repeat the
24 instructions. But I'm going to ask you a bunch of
25 questions about the photos. And I'm really asking

1 questions about each of them individually.

2 A Okay.

3 Q But they could all -- your answers could
4 be different for each different photo, but if it's
5 the same for all of them, you know, you can just say
6 "all of them." But if you are -- if, for example,
7 you say this one was -- you know, I told somebody to
8 do something with this one, just identify it as F-3
9 versus, you know, to differentiate them.

10 But there's no need -- if everything is
11 identical, then you can just say all -- all the same
12 for everybody. And if the way I'm asking these
13 questions seems to be in any way confusing, stop me.

14 A Okay.

15 Q Because I'm not -- all I'm trying to get
16 to is facts. I'm not trying to confuse you --

17 A Sure.

18 Q -- or get you to say anything that isn't
19 accurate.

20 A Okay.

21 Q Okay? So you took the photos in front
22 of you that are marked F-1 through 5?

23 A Correct.

24 Q Correct? Okay. Did anyone else assist
25 you need in taking these photos?

1 A Not those, no. I took these on my own.

2 Q Okay. So who do you contend owns the
3 copyright to these photos?

4 A I would say me.

5 Q Okay. And you actually registered a
6 copyright for these photos; correct?

7 A Correct.

8 Q Okay. So what caused you to register a
9 copyright?

10 A Legal counsel.

11 Q Okay. Let's back up for a second.
12 After you finished the job you said you went home,
13 you sent the link, and that was it.

14 A No. No. I airdropped them to her at
15 the location.

16 Q You airdropped them and then later sent
17 Mr. McElroy a link and then that was it. So when
18 did this come -- when did those photos or event come
19 to your attention again?

20 A I don't recall when, but Mr. McElroy was
21 the one that made me aware it was on People
22 magazine.

23 Q So you mean like a day later?

24 A Maybe within 24 hours. I think they had
25 the exclusive.

1 Q So what did you -- how did he tell you
2 that?

3 A I think via phone call.

4 Q A phone call?

5 A Yes.

6 Q What did you say?

7 A I was in shock. I -- I was just,
8 like -- I didn't know what to think. It was a very
9 long day, super tiring. But I was -- I was just in
10 shock. I didn't know what to think.

11 Q Were you excited? Were you --

12 A I was just in shock. I don't really
13 have another way to describe it.

14 Q Okay. So shocked in a good way?
15 Shocked in a bad way? It is a feeling you want to
16 have again?

17 A I mean, not when you don't see your name
18 written on any of it. Like it's -- that was -- it
19 kind of pissed me off.

20 Q Okay. Did you have any idea your name
21 wasn't attached?

22 A No clue. I don't even know why the
23 photos were on People.

24 Q Did you ever come to learn anything
25 about how the photo credit was given for those

1 photos?

2 A No.

3 Q If I told you that Mr. McElroy
4 instructed CAE's publicist to credit Night Owl as
5 opposed to you, would that be -- what do you think
6 about that?

7 A I mean, they were already credited on
8 that photo. So they were --

9 Q What if I told you they were credited
10 because he told them -- he told the publicist to
11 credit Night Owl, not you, Night Owl?

12 A You know, I -- I'm sure it was an honest
13 mistake if he did. You know, I've worked -- I
14 believe Mr. McElroy has high integrity, so --

15 Q Okay.

16 A I don't think -- if he did that, it
17 wasn't maliciously.

18 Q Okay. So he tells you that they're in
19 People. You take a look, and you get pissed because
20 your name's not on there. What happens -- what do
21 you do next?

22 A I'm not really sure what I did next.
23 I'm trying to think. I mean, I guess process. You
24 know, I was still busy doing other work.

25 Q Okay. Did you say anything to -- what

1 did you say to Mr. McElroy during that conversation?

2 A I don't recall. It was so long ago.

3 Q Okay. So the next couple of days you
4 process it. When did this come back to your
5 attention again?

6 A I think the 48 to 72 hours when I was
7 getting messages or I was being told by Nick that
8 there was other publications that had our photos.

9 Q Okay. Was he excited? Was he angry?
10 Was he happy? Sad?

11 A I think he was more concerned because
12 I -- I was concerned from the getgo because of the
13 whole --

14 Q Concerned how?

15 A Just crediting at first.

16 Q Okay. So what concerned you about the
17 crediting?

18 A It was improper.

19 Q Okay. How so?

20 A My name wasn't on it.

21 Q Okay. And why -- do you have any idea
22 why he was concerned?

23 A Just because it wasn't within the scope
24 of what we had thought was going on with these
25 photos.

1 Q Okay. So how -- how would it have --
2 how did that change your thoughts about the --
3 strike that. That's a bad question.

4 So your -- your concern is that your
5 name is not being properly credited to the photos.

6 A That was one of my first concerns, sure.

7 Q So what was -- what were your other
8 concerns?

9 A Well, I mean, later as we started
10 realizing that, you know, these photos were being
11 pushed out there and improperly tagged, I just -- I
12 felt bad about the situation.

13 Q What do you mean by that?

14 A I felt like I was taken advantage of.

15 Q How so?

16 A I had photos published that weren't
17 credited to me.

18 Q Okay. Photos published that weren't
19 credited to you. Anything else?

20 A I mean, the fact that they were
21 published at all. Like I didn't know about them. I
22 wasn't told about it. It was kind of upsetting.

23 Q Okay. Was there any kind of an
24 arrangement where -- that you had to be notified of
25 the publication?

1 A Well, I mean, like, you know, Nick and
2 I -- Nick had told me it was going to be for social
3 media, so

4 Q Okay. So let's suppose hypothetically
5 that a picture was posted on social media and then
6 it was picked up by People. Would that have been
7 fine with you?

8 A Yeah, because they probably would have
9 called me. Most of the time when anybody wants to
10 use my publication I get a call. I've had websites
11 that have used my photos before, and they'll call me
12 and ask beforehand and they'll try and either buy it
13 or, you know, lease it somehow.

14 Q Okay.

15 A But it's usually etiquette and
16 respectful to go to the first person that created
17 it.

18 Q Okay. So what angers you most? The
19 fact that it was used at all, or the fact that your
20 name wasn't attached to it?

21 A I think I stated it was a combination of
22 both.

23 Q Okay. So who do you hold responsible
24 for your name not being attached?

25 A I guess the person who published it in

1 People, the editor, for not checking the sources. I
2 don't know. I don't know who to place blame to at
3 this point.

4 Q Okay. I want you to take a look at some
5 of these messages. They might not be -- well, they
6 were attached to your -- attached to the
7 counter-claim.

8 I'm sorry. Mr. McElroy previously --
9 there was some discussion during his deposition
10 where he knowledged these text messages, and they're
11 messages between him and Danika Berry whose DB
12 Agency is the publicist for CAE. Okay?

13 A Okay.

14 (Exhibit Number 6 was marked.)

15 Q And these are marked as Exhibit 6. So
16 if you look there in Exhibit 6, I've got it on
17 Page -- I have it at Page 6 right now. You will see
18 where -- actually, let's start at Page 5, if you
19 don't mind turning back one.

20 You'll see where Mr. McElroy is saying,
21 "This one is for Bryan." And then the following
22 page carries through, "This one is for Bryan," and
23 it keeps going. And then Danika says, "It's going
24 to be hard with all these different pics. Is it the
25 same company?"

1 I mean, this is talking about photo
2 credit. And then Mr. McElroy says, "We can just do
3 Night Owl Post on all of them."

4 Did you give Mr. McElroy permission
5 to take your -- to remove your name as a photo
6 credit?

7 A I don't recall.

8 Q You don't recall?

9 A Hmm-hmm.

10 Q You testified a few minutes ago that you
11 were quite angry that your name didn't appear on the
12 photos.

13 A That's correct.

14 Q And you don't remember if you gave him
15 permission?

16 A I don't.

17 Q No?

18 A This is well over a year ago. So it's
19 kind of hard to remember what we discussed.

20 Q Well, if you looked at the pictures and
21 saw your name wasn't attached to them and the first
22 thing was being upset that it wasn't attached, why
23 would you be upset if you gave him permission to not
24 have you credited?

25 A I -- I don't know if I knew about this.

1 Q Didn't you take a look and say, hey --

2 A I don't know if I knew about this. This
3 is with -- a conversation with who?

4 Q This is a conversation with Danika, the
5 publicist.

6 A Okay. I don't --

7 Q This is where the photos are being
8 distributed.

9 A Okay.

10 Q And she's asking about photo credits.
11 He initially says "Bryan" and then he later says
12 "Let's just do Night Owl, Night Owl Post." And
13 he tells Danika to remove your name from the photo
14 credit and just do Night Owl Post.

15 So you're saying you don't remember if
16 you gave him permission to do that or not?

17 A Correct.

18 Q Okay. So based on this, who do you hold
19 responsible for your name not appearing in the photo
20 credits?

21 A I mean, I think I stated the editor
22 originally.

23 Q Okay. So why would -- the editor of
24 what?

25 A People.

1 Q How would the editor of People know who
2 you are if Mr. McElroy said to credit Night Owl
3 post?

4 A No clue. I feel like if an editor posts
5 information, she'd probably do research, right?
6 Just like news reporters or whatnot.

7 Q So how would they find out if the photo
8 credit -- if I take the photo off of the Internet
9 right now, okay --

10 A That's not where the photo came from,
11 though.

12 Q If I took a photo off of your camera
13 right now, a raw file, and turned it into a JPEG or
14 whatever, emailed it to myself --

15 A Well, the photo was sent to somebody who
16 knew who took it.

17 Q Sure.

18 A So I would hope that they would send the
19 proper information.

20 Q Sure. Well, Mr. McElroy said the proper
21 information was Night Owl Post?

22 A Correct. I can't control what he says.

23 Q So I guess what I'm saying is: How
24 would People magazine -- if Mr. McElroy said use
25 Night Owl Post for the photo credit, how would

1 People magazine -- why would they --

2 A Where did People get the photo from?

3 Q People got it from Danika.

4 A Where did she get them from?

5 Q From Mr. McElroy.

6 A Okay. Well, I sent them all to her
7 originally, so she knew I took those photos. She's
8 friends with Danika. They should have communicated.

9 Q Okay. So you hold Ms. Ajinca
10 responsible --

11 A Sure.

12 Q -- because she would have communicated
13 with Danika?

14 A I mean, she was using my photos.

15 Q Okay. So did you have a contract
16 with --

17 A I didn't have a contract with anyone.

18 Q Okay. So you don't hold Mr. McElroy
19 responsible at all for the photo credit --

20 A No.

21 Q -- being Night Owl and not you?

22 A (Nodding.)

23 Q No.

24 Okay. So back to -- back to this
25 timeline. You were upset. You're upset. You and

1 Mr. McElroy had a phone conversation. You hang up.
2 At this point you're somewhat upset because your
3 photo is not credited, your photo -- your name is
4 not on the photo as credit and you're somewhat upset
5 because they were on People magazine.

6 So what happens next? You hang up with
7 him. What do you do next?

8 A I don't recall.

9 Q You don't recall. So how do you end up
10 getting a copyright?

11 A Through legal counsel.

12 Q Okay. So what caused you to go to legal
13 counsel?

14 A Having a verbal discussion with Nick,
15 and we both felt -- you know, after all the
16 publications came out, we felt that we were taken
17 advantage of.

18 Q When did that take place?

19 A I don't know. Sometime after the event.

20 Q So how -- never mind. When you had this
21 conversation with Nick, was it by phone? In person?
22 Text message?

23 A If I had to guess, possibly a phone
24 call. I'm not really sure.

25 Q So what did you say? What did you guys

1 discuss?

2 A What did I say? Just how I didn't feel,
3 like, right about the situation. I felt like we
4 were taken advantage of.

5 Q Okay. So what did you -- so that caused
6 you to go to a lawyer?

7 A Nick -- Nick was seeking out counsel.

8 Q Okay. So how did you end up getting a
9 copyright?

10 A My legal counsel advised me.

11 Q Which legal counsel?

12 A Marcy.

13 Q Okay. Did you use the same company for
14 the copyright that Mr. McElroy did?

15 A Our attorneys took care of all of that.

16 Q Okay. How -- approximately when did you
17 first consult with legal counsel?

18 A I have no clue.

19 Q You have no clue?

20 A I was wrapping up, about ready to leave
21 the country. Like I was in the last couple of
22 months of living in the States, so I had a lot going
23 on.

24 Q So when did you leave?

25 A October 12th.

1 Q You left October 12th.

2 A Uh-hmm.

3 Q So you talked to legal counsel --

4 A Sometime between July and then.

5 Q Sometime between July and October.

6 Okay. Did you ever try to communicate with CAE or
7 Courtney or --

8 A I don't have her contact information.

9 Q Okay. So are you aware if they had your
10 contact -- if they ever had your contact
11 information?

12 A I have no clue.

13 Q Okay. So if you had no way to
14 communicate -- when you airdropped the photos from
15 your MAC, where did you airdrop them to?

16 A I believe her cellphone.

17 Q Okay. So that wouldn't necessarily
18 leave your cell -- your contact information when you
19 airdrop them.

20 A Well, a lot of times what I try and do
21 when I export in Lightroom is try and put that in
22 metadata. But I was so rushed to try and get these
23 out that I don't think any of that was attached to
24 it.

25 Q Okay.

1 A So it was just a quick edit, export.

2 Q Okay. So she would have no idea how to
3 contact you either.

4 A Yeah, if I had, you know, normal -- my
5 normal timeframe to return the photos, everything
6 would have been on there.

7 Q Okay. But when you started the job you
8 understood that you -- that they needed to be turned
9 out fast?

10 A Yeah. I mean, generally pretty quickly,
11 you know. I've never -- right after a shoot I've
12 never had to do that.

13 Q Did you know that before you started the
14 shoot?

15 A No.

16 Q When -- how long did you think you had?

17 A Usually 24, 48 hours.

18 Q Okay.

19 A We rarely do same day, though. I mean,
20 it's just a lot of work.

21 Q Did Mr. McElroy tell you that these
22 photos needed to be delivered on the same day?

23 A Usually it's -- he just -- if he did
24 mention, it would be quick turnaround time. Usually
25 I try and -- if he says "quick," then I try and do

1 it --

2 Q But did he say that as part of the terms
3 for CAE?

4 A No, she -- she wanted them right then.
5 I was just going to shoot.

6 Q Okay. Did you say anything to her, like
7 no, I don't do that, I -- I didn't know we needed to
8 move -- we needed to move quickly or --

9 A No. I mean, obviously I did it. She --
10 she asked me for them and I airdropped them to her.

11 Q Did you say anything about the use --
12 how much -- you know, what she could do with them or
13 what she couldn't do?

14 A No, I don't believe I had that
15 conversation.

16 Q Okay. So you started the copyright
17 process after you consulted with legal counsel.

18 A Correct.

19 Q And that was a result of conversations
20 with Mr. McElroy?

21 A Correct.

22 Q Okay. Prior to the engagement shoot,
23 did he ever tell you anything about the photo shoot
24 he did for the Frost Bistro?

25 A What is that?

1 Q It's a restaurant. He didn't mention
2 that --

3 A Is that the Star Magazine stuff?

4 Q Yeah.

5 A After the fact when counsel discovered
6 it.

7 Q Okay. So let's go back to these photos
8 now, part of Exhibit 2, I believe, 1 through 5.

9 A Uh-hmm.

10 Q Okay. Who was the author of these
11 photos?

12 A I would say me.

13 Q Okay. Who told you to take photos of
14 these subjects, or what caused you to take photos of
15 these subjects?

16 A Well, we were just told to take photos
17 of the event.

18 Q Okay.

19 A So -- and we were the only two
20 photographers allowed in there.

21 Q Okay. And you were taking -- do you
22 have any idea why that was, that you were the only
23 two photographers allowed in there?

24 A We were mentioned at the end that there
25 was like a proposal going on. But, you know, it was

1 to photograph the event, decor, and then this became
2 an opportunity.

3 Q So looking at those photos, would you
4 consider these to be pictures of essentially
5 capturing -- capturing images of what's taking place
6 at an event?

7 A I would consider these like -- I'm
8 sorry. Can you restate the question?

9 Q Let me ask -- make it easier. What type
10 of photos would you call these? What kind of
11 category, if you had to describe generally the style
12 or the type?

13 A Lucid creativity? I mean, you know, I
14 do about 14 -- 14 different steps before I take a
15 photo. You know, you can't just hand somebody a
16 photo -- you know, a camera and take pictures, you
17 know, especially if you want them to be proper on
18 the sensor.

19 Q Okay. So what are the 14 steps you
20 take?

21 A Well, the first one is I like to custom
22 white balance. I like to set the camera on raw. I
23 like to make sure to set the ISO, the aperture, you
24 know, all the different settings, you know, how are
25 we shooting the trigger, you know, my positioning,

1 the lenses that I'm using, the F stop.

2 You know, all that I take into
3 consideration before I start doing this. It's a
4 process for me.

5 Q Okay. So once you're done with that
6 process, then that's when you take the photo?

7 A Yes. Once I realize, yeah, the color
8 conditions of the room, so on and so forth, and I
9 feel comfortable, I start taking photos. I like to
10 consider myself an on-sensor photo -- photographer.
11 So I'm not doing too much in post.

12 Q Okay. So what about -- I notice with a
13 lot of these photos there's heads and stuff in the
14 way. Do you ever worry about getting a clear shot
15 of the subjects?

16 A I mean, in this one I'm between two
17 arms. I'm crouched over. You know, you have to
18 position yourself creatively. You have to be
19 creative and think on the spot when you're a
20 photographer.

21 I'm literally crouched below two people
22 that are standing right next to each other. So it's
23 just from years of experience.

24 Q Right. And these are photos, would you
25 say, trying to capture a moment?

1 A An emotion. Real, true, raw emotion.

2 Q Okay. So what -- which of those photos
3 between F-1 and F-5 captures emotion the best in
4 your opinion?

5 A F-1 and F-2.

6 Q Okay. Did you in any way influence
7 those -- those poses, what the people were doing in
8 those photographs?

9 A You know, I didn't ask her to marry me,
10 so no.

11 Q Did you say, hey, guys, I need you take
12 a picture -- you know, I need you to --

13 A Not during photos, no. Some of the ones
14 after the fact.

15 Q For any of F-1 through F-5, for any of
16 these photos in front of us, did you say to any of
17 the subjects, hey, I need you to turn this way, look
18 this way, I need you to --

19 A So I believe on this one --

20 Q -- smile? Frown?

21 A -- I, like, nodded at him. Because we
22 were the only two ones with cameras in the room. So
23 everyone else -- the only other cameras that were in
24 the room were video cameras. So as far as still
25 photography, you know --

1 Q Okay. So you were the only two with
2 cameras. Was it your decision that none of those
3 photos had any of the subjects looking in your
4 direction, or was it --

5 A I believe the bottle placement on this
6 one was.

7 Q Okay.

8 A Yeah. Because I would -- after the
9 engagement and everyone was walking, I was trying to
10 capture their attention, hey, let me, you know --

11 So, yeah, I would say I had some
12 direction on some of these. Obviously none of these
13 (pointing), but --

14 Q Okay. So did you have any influence on
15 what any of these people were wearing, any of the
16 subjects in any of these?

17 A No.

18 Q How about generally their position? Did
19 you move anyone around or ask anybody to --

20 A The bottle placement on these two.

21 Q The bottle. You said --

22 A I was just trying to capture the
23 attention so I could at least get these photos
24 clear. If you'll notice, I'm a lot closer on these.
25 These were during the asking of it, so --

1 Q But what do you mean bottom placement?

2 A I mentioned earlier that I would try and
3 capture his attention by either nodding my head or
4 saying, hey, look at me real quick.

5 Q But did you tell him to hold the bottle?

6 A Well, I was just trying to get -- get
7 the image of that. You know, he was holding it
8 around.

9 Q So you're kind of passive? You know,
10 you're taking -- you're taking what's coming up in
11 front of you?

12 A Yeah, and then trying to get some stuff
13 that I've directed. Slight direction.

14 Q Okay. So, you know, after a wedding the
15 -- when everybody is together at the altar or
16 whatever and you move the bride and groom around and
17 everybody else. Was it that kind of situation? Was
18 it anything like that for any of those photos posed
19 by you?

20 A No. None of these, no.

21 Q Okay. And these were all taken at the
22 same location; correct?

23 A Yes.

24 Q And they were all at an event center?

25 A I don't know what it was. It was

1 like -- there was shops. There was this room that
2 they had decorated with all this cool stuff.

3 Q It wasn't your studio, was it?

4 A No, it wasn't.

5 Q It wasn't anyone else's studio, was it?

6 A I don't -- no, obviously it wasn't mine.

7 I don't know whose it was, but --

8 Q Did you say to anyone, hey, I want
9 this -- I need -- to do my best work I need this
10 green grass in the back? Did you have anything to
11 do with the decor or the setting?

12 A No.

13 Q Okay. Did you control any of the
14 lighting, anything --

15 A Within the camera, yes.

16 Q -- other than your camera?

17 A Yeah, within the camera.

18 Q Other than the camera.

19 A No.

20 Q Okay. Did you say to anybody, hey, it's
21 too dark over here, crank up the lights?

22 A No, they already had it set forth that
23 because there was already a video crew in there.

24 Q Okay. So when you created these photos,
25 you did them at the request of CAE or someone else?

1 A Well, Nick asked me to come along and
2 take photos, so I did.

3 Q Okay.

4 A And then once I was there I took
5 direction from, you know, Courtney and I guess other
6 people with walkie-talkies that seemed like they
7 knew what they were doing.

8 Q Okay. So you delivered photos to Mr.
9 McElroy; correct?

10 A To her, Miss Courtney.

11 Q You also delivered them to Mr. McElroy?

12 A Well, I sent him a link to the photos,
13 yes.

14 Q And you understood that those pictures
15 were going to be distributed?

16 A To social media, yes.

17 Q And you were okay with them being
18 distributed to social media; correct?

19 A Correct.

20 Q Prior to sending any of the photos to
21 Courtney did you say, hey, here's the copyright,
22 don't -- you know, you can use them for this or you
23 can't use them at all, or here are the limits?

24 Did you give Mr. McElroy any such
25 limiting before you distributed them?

1 A It was just agreed upon that these were
2 going to be photos that I took and, you know, his
3 client was going to distribute them via social
4 media.

5 Q And that was agreed upon between you and
6 Mr. McElroy?

7 A Correct.

8 Q So if they were published outside of
9 social media Mr. McElroy broke his agreement with
10 you. Would that be accurate?

11 A I wouldn't say that.

12 Q Well, if you give photos to Mr. McElroy,
13 a link to photos, and then he gives them to somebody
14 else and then they get -- they go beyond what you
15 expected, whose fault is that?

16 A Well, he was deceived by it, too, so I
17 don't -- we were both under the impression that they
18 were to be used for social media.

19 Q Did she ever tell you that -- we already
20 went through that. So you're saying you were both
21 deceived and you're relying completely on the word
22 of Mr. McElroy?

23 A Yeah. I think I said before he has --
24 he's always had great integrity with me.

25 Q Okay. And that's also -- his great

1 integrity is why you don't hold him responsible for
2 you're not being in the photo credit?

3 A I believe I already answered that.

4 Q Okay. So you -- I think you spoke --
5 you didn't -- metadata wasn't attached to any of
6 those photos?

7 A It was so quickly. Like I said, it
8 was -- I was asked to deliver them right then and
9 there.

10 Q So what -- when you delivered the photos
11 right then and there, what steps did you take so
12 that CAE or Courtney would know what the limits were
13 or what -- or that they were copyrighted?

14 A I believe I answered that as well.

15 Q Okay. Did you ever send or attach or
16 otherwise give some kind of copyright notice or
17 declaration, you know, putting it into the shared
18 folder that you shared with Mr. McElroy or --

19 A I answered that question already as
20 well.

21 Q Okay. So let me make sure. So the
22 answer is no?

23 A What I referred to earlier.

24 Q Okay. So how do you -- who did you
25 license -- well, did you license any of the photos?

1 MS. SPERRY: Objection. Calls for a
2 legal conclusion.

3 Q (By Mr. Barnes) Did you give anyone
4 permission to use the photos?

5 A Well, I mean, I guess sending them
6 to Courtney for use for social media when I
7 airdropped them to her.

8 Q Okay. But, again, that giving -- you
9 gave them to Courtney for use for social media based
10 upon an agreement between you and Mr. McElroy is
11 what happened. And you were aware then -- I mean,
12 social media is online; correct?

13 A By the definition, I believe so.

14 Q Okay. So did you have any
15 understanding -- CAE wants to publish these on their
16 social media profile is what you're told. So
17 they're -- you know that the photos -- or you
18 believe the photos are going to be published online,
19 released on a social media --

20 A Via social media, correct.

21 Q And the photos published online, they
22 can be copied by other Internet users; correct?

23 Do you have an Instagram page?

24 A Sure.

25 Q So you could -- if you see something you

1 like, you could click on it and you could save the
2 image.

3 A You can screen-shot a low resolution
4 version of the image, sure.

5 Q Okay. So by putting it out there on the
6 Internet at all there is always a risk that it's
7 going to go everywhere; right?

8 A (Nodding.)

9 Q Okay. And knowing that there was that
10 risk that it could go anywhere, you didn't see the
11 need to put any copy -- attach any copyright
12 information to it.

13 A Yeah. Like I said, it was very quick.
14 I was on the spot, asked to edit and deliver them.
15 So I didn't have the time. I was super tired. We
16 had just finished filming, photographing.

17 Q Okay.

18 A I don't know if you know, but I'm -- I'm
19 pretty heavy. So I'm pretty tired after a shoot.
20 Out of shape, fat, so ...

21 Q Fair enough.

22 A Yeah.

23 Q So you share something -- like when you
24 share something on your Instagram page, you're
25 sharing it for your followers; right?

1 A I share my photography for me. If
2 people like my work and they want to follow me,
3 fantastic.

4 Q Okay. But you're trying to reach a
5 larger audience than you already have?

6 A I'm trying to capture emotion and be
7 able to sell that to my clients.

8 Q Okay. So the link to the photos that
9 you sent to Mr. McElroy, did that allow download
10 access to those files?

11 A It depends how the browser was set.
12 Normally I have a password protection, and depending
13 on whether clients have paid or not, I allow
14 download access. But I'm not sure how it was set
15 when I sent them over.

16 I know that I'm able to set those
17 parameters within my gallery, but I don't know how
18 they were sent.

19 Q Okay.

20 A It's the similar situation. They can
21 still screen-shot it, though.

22 Q So how many -- how many photos have
23 you sold? And what I mean by that, not private
24 commission where you're paid -- like wedding photos,
25 things like that. But you take a picture of a

1 sunset and somebody wants to buy it, photos like
2 that. How many have you sold?

3 A Tangible photos? Digital photos?

4 Q Either way.

5 A A handful.

6 Q Okay. What's the most you ever got for
7 a photo you sold?

8 A Well, I sold a print. I think it was
9 close to two grand for a canvas.

10 Q And does that include the production
11 cost?

12 A That was with the production -- well,
13 that was just the cost of the canvas and --

14 Q That's what I meant. So somebody gave
15 you \$2,000 and you gave them the canvas with the
16 photo?

17 A That they have, yeah.

18 Q Okay. So your -- do you have any idea
19 how much the canvas part, the production of the --

20 A It was a couple of hundred dollars.

21 Q A couple of hundred dollars.

22 All right. And you said that you've
23 been contacted in the past from people looking for
24 commission for photos?

25 A Yes.

1 Q How often does that happen?

2 A It was a lot more back before I left for
3 Peru. You know, when you leave the country you kind
4 of lose a lot of clients. And, you know, I
5 dispersed a lot, too, so ...

6 Q Okay. So how did -- when people would
7 call for those, were they wanting to buy photos or
8 just rights to put them somewhere else?

9 A Use them.

10 Q Use them. Use them for what?

11 A Maybe a website.

12 Q Okay. So you -- did you ever turn
13 anybody down and said, no, you don't have my
14 permission?

15 A I mean, I believe one time I -- well,
16 the person that asked for that website I didn't
17 allow them to.

18 Q Okay. When people are asking, do you --
19 generally would you say, yes, in exchange for money
20 or something else, or would just say, sure, I would
21 be happy --

22 A I'm always open to the discussion.

23 Q Okay.

24 A But it's never set in stone. I mean, it
25 just depends on the situation.

1 Q Okay.

2 A I don't have like a set price for
3 photography either.

4 Q Okay. Well, what determines your price?

5 A It depends. If I'm going to Japan,
6 my -- I have to rent equipment. It really just
7 depends.

8 Q Okay. So in all of these -- all of the
9 instances where any of your photos, F-1 through 5,
10 where they were shown online, were they ever shown
11 without a caption or any explanation or story? Was
12 it just images somewhere, this is it?

13 A I don't -- I don't remember.

14 Q Were they part of a news article or some
15 kind of an article or --

16 A What do you mean? I'm sorry.

17 Q Like when your -- when your photos
18 appeared, when you see -- like in your complaint you
19 have a list of a bunch of different instances where
20 these photos appeared online. In all of the --
21 you've looked at the --

22 You know what's in the complaint;
23 correct?

24 A For the most part, yes.

25 Q Okay. So in any of the ones that you

1 found, did you find it -- were your photos typically
2 accompanying an article or some kind of a blurb?

3 A I believe so. I believe they were
4 magazines that were publishing it with words.

5 Q So, I mean, it wasn't like somebody, you
6 know, just offering to sell a canvas or anything
7 like that.

8 A There's so many that infringed that I
9 don't know.

10 Q Okay. You said that you found out about
11 the use of the photos or the photos were on People a
12 day or two after --

13 A I think it was whenever -- whenever Nick
14 called me to tell me that they were on there. I
15 don't remember when that was.

16 Q Okay. And did you -- did you say to
17 him, listen, you've got to get them on the phone and
18 tell them to do something or --

19 A Not that I recall.

20 Q Did you say, hey, you've got to make
21 them knock this off?

22 A I'm not sure.

23 Q You're not sure if you wanted -- if you
24 vocalized that you wanted the conduct to stop?

25 A No. I mean, I'm not -- I'm not sure.

1 Q Okay. So you never actually personally
2 said -- after you found out about this, you never
3 went to Courtney or CAE or emailed anybody on that
4 side and said, stop sending out these photos?

5 A I wouldn't have had a way to contact
6 them.

7 Q Okay. Did you ever advise Mr. McElroy
8 to do that on your behalf?

9 A Do what? Ask them to stop?

10 Q Tell them to stop, yeah.

11 A I mean, I'm not really sure what we had
12 discussed at that point in time.

13 Q Did you ever ask him for the contact
14 information?

15 A No.

16 Q Say, hey, this is crazy, I'm going to
17 deal with this myself?

18 A That's just out of professional
19 courtesy. I don't do that. Because a lot of times
20 photographers try and steal clients.

21 Q So what -- okay. So it was Mr.
22 McElroy's client?

23 A I mean, he's -- he was the point of
24 contact for Miss Courtney. I didn't have any
25 contact with her outside of the actual event.

1 Q Okay. So if Mr. McElroy made a deal
2 with CAE for the use of these photos, that was
3 different than the deal you made with Mr. McElroy?

4 A I don't know.

5 Q I said if that was the case.
6 Hypothetically he tells you social media, and for
7 one reason or another it's billboards all the way to
8 the top, you know, Times Square billboard. Is it
9 Mr. McElroy -- whose fault is it if it gets used in
10 a billboard without your --

11 A I'm not -- I'm not a judge.

12 Q Okay. So what took between -- I believe
13 you started the copyright process in Exhibit 2. It
14 looks to be about October 24th, late October of
15 2019.

16 A Uh-hmm.

17 Q So what -- what took so long to get
18 those copyrighted, to register the copyright?

19 A I have no clue. Like I said, I was very
20 busy getting my affairs in order to leave the
21 country, so ...

22 Q When did you first order the copyright
23 or hire somebody to take care of the copyright?

24 A I'm not sure.

25 Q What about -- why were these the only

1 photos that you copyrighted?

2 A Recommended by counsel.

3 Q Okay. So did you have -- you weren't
4 concerned about all the other photos that were sent
5 to CAE?

6 A A lot of them were just decor.

7 Q So it wouldn't have bothered you if
8 there was a picture of decor in People magazine?

9 A As long as it was still used for social
10 media, I would have been fine with it. But if it
11 would have ended up in Home & Design magazine, I
12 probably would have been upset about that, too.

13 Q Okay. Why didn't you take any steps to
14 register the copyright?

15 A We did. It just took a while.

16 Q But why not for any of the decor ones?

17 A I'm not sure. I don't know how the
18 answer to that.

19 Q Okay. So with the copyright being
20 registered in October, that obviously was after the
21 pictures were published; correct?

22 A Uh-hmm.

23 Q Are you aware of any picture in any of
24 F-1 through F-5 being published after October?

25 A I'm not sure. Unfortunately the

1 Internet's large and a lot of places things can get
2 published. So I don't know.

3 Q Okay. So just to be clear for the
4 record, did you ever have CAE or Courtney sign any
5 nondisclosure agreement?

6 A No.

7 Q Any resale agreement?

8 A No.

9 Q Okay. Did ever talk with CAE or
10 Courtney and say, hey, do you promise you're not
11 going to distribute these photos beyond what we've
12 talked about?

13 A No.

14 Q Okay. So who do you -- like for this
15 job, the engagement party, who do you consider --
16 who were you working for?

17 A I work for myself. I'm an independent
18 contractor.

19 Q You're an independent contractor. But
20 you were there -- somebody hired you to be there;
21 right?

22 A Someone paid me to come along to take
23 photos.

24 Q So who is that?

25 A Nick.

1 Q Okay.

2 A But he's not my boss. I'm an
3 independent contractor.

4 Q Well, in this case had you gotten to the
5 site and he said, go away, I don't need you anymore,
6 would you have continued working?

7 A If I wanted to. I mean, it's a free
8 country. He doesn't own the venue, so

9 Q Even if it's a private event?

10 A Well, it was a public place. There was
11 other shops around. If I wanted to stay and
12 continue shopping --

13 Q Yeah. I'm talking about for the
14 engagement party itself.

15 A Okay.

16 Q What I'm getting at here is Mr. McElroy,
17 if he would have said "go home," if he would have
18 said, "you're not needed" --

19 A He's not my boss. He asked me to come
20 along and take photos.

21 Q Who is your boss then?

22 A Myself. I'm my boss.

23 Q Okay. So if it was just you out of the
24 blue --

25 Okay. You're your own bos. How did you

1 get paid for this?

2 A I don't remember. Maybe cash. I'm not
3 sure.

4 Q By who?

5 A Nick.

6 Q Okay. So if you're your own boss and
7 Nick -- why would Nick be paying you?

8 A Because he was the point of contact.

9 Q The point of contact.

10 Okay. Were you doing any of this work
11 on behalf of Night Owl?

12 A No.

13 Q Okay. Would Mr. McElroy have any reason
14 to believe you were doing any of this work on behalf
15 of Night Owl?

16 A No.

17 Q Okay. So do you have any agreement with
18 Mr. Flores regarding the --

19 A I am Mr. Flores.

20 Q I'm sorry.

21 -- with Mr. McElroy regarding the
22 proceeds of any claims or case regarding these
23 photos?

24 A No, not -- I don't recall.

25 Q Do you have a piece of the action in his

1 photographs? Do you benefit -- do you gain any
2 benefit from any of the proceeds of the lawsuit for
3 these photographs that are marked M-1 through 4 that
4 Mr. -- that Mr. McElroy identified earlier as being
5 taken by him?

6 A I don't recall. I do have -- I was --
7 received wire transfers, but I don't know for which
8 cases. And it was BCB Bank in Peru that it was
9 wired to, so if you need to pull a subpoena for
10 them ...

11 Q Okay. So let's start then with the
12 settlement agreements. You settled with CNN; right?

13 A I believe so, yes.

14 Q Do you remember how much --

15 A No.

16 Q -- the total settlement was?

17 A I think you guys mentioned it earlier
18 with Nick. I don't remember, no.

19 (Exhibit Number 44 was marked.)

20 Q Okay. Take a look. It's Exhibit 44.

21 A It says \$3,000.

22 Q \$3,000. Okay. So how much of -- how
23 much of that settlement did you receive?

24 A I have no clue. Again, I --

25 Q With the CNN I'm going to show you a

1 demand letter that says -- look at that. Take a
2 look at the photos that accompany it.

3 A Yep.

4 Q Okay. Is that photograph any of yours?

5 A No.

6 Q No?

7 A It is, yes. I'm sorry. That's it.

8 Q Which one?

9 A F-2.

10 Q F-2. Do you see any of Mr. McElroy's
11 photographs in that demand?

12 A I do not.

13 Q Okay. Do you know if Mr. McElroy
14 received any money --

15 A I no clue.

16 Q -- from CNN as part of the settlement?

17 A I don't have access to his bank
18 statements, so I have no clue.

19 Q Well, you sign a settlement agreement.

20 A Correct.

21 Q You signed a deal with CNN for work you
22 were saying was infringed -- that your copyright was
23 infringed.

24 A Correct.

25 Q Would you agree that as far as CNN is

1 concerned, the only copyright that could have been
2 infringed on was yours?

3 A According to the paperwork, yes.

4 Q So if it's the -- I'm caveating this.
5 I'm saying infringed -- this is your allegations.
6 I'm not saying that my client's saying it was
7 infringed. But you -- you're claiming that
8 Photograph F-2, your phorograph, was -- your copy of
9 it was infringed on by CNN. The case was settled
10 for \$3,000. And you're -- and you don't know if Mr.
11 McElroy got any of that money?

12 A I'm not sure. Like I said, we've had
13 several different cases. So, I mean, different --

14 Q What's the date on that?

15 A February 25th, 2020.

16 Q Look -- well, look at -- when was it
17 signed, the settlement agreement?

18 A Was that this one?

19 MS. SPERRY: Yes.

20 A 2/26/2020.

21 Q Okay. So you're saying that less than
22 five months ago you have no recollection of whether
23 or not Mr. McElroy received any money?

24 A I was living out of the country. The
25 country I was living in was put in a pandemic

1 shutdown because of COVID right around this time.

2 So I had a lot going on.

3 Q Okay. Would you -- do you believe that
4 Mr. McElroy would be entitled to any money for the
5 use of -- for CNN's use of your photographs?

6 A I am not a judge to that.

7 Q It's your photograph.

8 A Sure.

9 Q Would Mr. McElroy be entitled to any
10 money for its use?

11 A I mean, this photograph wouldn't exist
12 if he hadn't brought me along.

13 Q Okay.

14 A So I still don't --

15 Q So do you have a deal -- what I'm trying
16 to get to here -- and we can go through this all
17 night just like we did with Mr. McElroy is, is there
18 any agreement for any compensation -- does he have
19 any piece of any of these photos? Does he have any
20 rights to collect anything?

21 That's what I'm trying to ask you.

22 A Like I said, I don't know what was
23 distributed, so I don't know if -- who got what from
24 which.

25 Q If we look at CNN --

1 A Okay.

2 Q So you're saying your just blindly
3 signed documents?

4 A I never said that.

5 Q So what was -- did you read the
6 settlement agreement before you signed it?

7 A I skimmed it.

8 Q You skimmed it?

9 A Uh-hmm.

10 Q Okay. And this is a -- this is a
11 document where you're getting paid?

12 A Yes.

13 Q How much?

14 A I don't know.

15 MS. SPERRY: Objection. Asked and
16 answered. He's asked -- he's answered it
17 several times.

18 Q (By Mr. Barnes) You're getting -- okay.
19 So you -- you don't know how much you're getting
20 paid, but you just skimmed this.

21 A (Nodding.)

22 Q Is it possible that the agreement you
23 made with -- regarding the photos, F-1 through F-5,
24 your memory is flawed about the terms of that
25 agreement?

1 MS. SPERRY: Objection.

2 Q (By Mr. Barnes) How do you have such a
3 vivid memory of that -- the terms of that agreement,
4 but you can't remember something you signed five
5 weeks ago? Were you getting a check five months
6 ago?

7 MS. SPERRY: Objection. What agreement
8 are you talking about with the memory? That's
9 not his testimony.

10 Q (By Mr. Barnes) Okay. You have a vivid
11 memory -- you said that you -- you specifically
12 remember social media only posts for an event that
13 happened pretty much a year ago.

14 A Well, that's just normal MO. That's
15 just kind of how -- the work that we've done has
16 been social media work. That's just pretty
17 standard.

18 Q What -- what other work did you -- I
19 thought you said the other work you did with
20 Mr. Flores was a wedding.

21 A I'm Mr. Flores.

22 Q I mean, with Mr. McElroy was a wedding.

23 A Okay.

24 Q So if you did two jobs with Mr. McElroy,
25 a wedding and this, you're telling me that the

1 wedding was a social media only license?

2 A Yeah, nobody's posting that on People
3 magazine. No one's -- yeah, that's all being posted
4 on social media and print for their home and their
5 use.

6 Q Sure. Sure. But that's a totally
7 different deal than just social media posts only.

8 A So why are we comparing them?

9 Q Because you said that they were -- you
10 said there was -- you said it was a year and up.

11 A Yeah, the contracts that I have with
12 my -- with my wedding clients state that I will
13 retain all the copyrights to the photos.

14 Q Okay. And did you have -- did you sign
15 a contract like that with the -- with the deal with
16 Mr. McElroy with the photos?

17 MS. SPERRY: Objection. Asked and
18 answered.

19 A Yeah, I've already answered that.

20 Q So you have no explanation -- if Mr.
21 McElroy received money as part of the CNN
22 settlement --

23 A I don't know. I've already answered
24 that.

25 Q You don't know that. But if he did,

1 would -- in your opinion is he entitled to any money
2 for the use of your photo -- CNN's use of your
3 photo?

4 A I would feel like I owe him something
5 for getting me the opportunity to take these
6 pictures.

7 Q Okay. So you -- what do you mean by you
8 owe him something? You owe him a percentage? You
9 owe him a flat fee? You owe him a thank you? You
10 owe him a beer?

11 MS. SPERRY: Objection. Compound.

12 Q (By Mr. Barnes) Who do you owe him?

13 A It would be hard to say.

14 (Exhibit Number 35 was marked.)

15 Q And you would agree -- let's look at the
16 -- what we've marked as Exhibit 35. Yes, 35. It's
17 a letter from your lawyer to CNN.

18 Have you seen that before?

19 A I believe digitally.

20 Q So would you agree that the
21 settlement from CNN was -- came about due to demands
22 made by you and Mr. Flores through your lawyer?

23 A I'm Mr. Flores.

24 Q I mean Mr. McElroy. Sorry.

25 A Repeat the question.

1 Q Would you agree that the settlement with
2 CNN came about because of the demand that you and
3 Mr. McElroy made on CNN, made upon them for payment
4 for copyright infringement?

5 A I mean, we hired our lawyers to -- to do
6 this. I mean, that's what --

7 Q I mean, CNN didn't just call up out of
8 the blue and say, hey, let me send you some money;
9 right?

10 A Yeah. My lawyers sent this.

11 Q You guys sent this letter and said, pay
12 us, you owe us; right?

13 A Yeah, my attorney sent this.

14 Q Sure. At your direction?

15 A Yes.

16 Q So that letter says in there that
17 there's -- that you and Mr. McElroy have an interest
18 in these nine photos and that Photo 1 -- one of the
19 photos was used and that you and Mr. McElroy are
20 entitled to be compensated. So why was Mr. McElroy
21 entitled to be compensated?

22 A Well, it's mentioning one of nine, so
23 there's five here and four there, so --

24 Q Did you take any pictures jointly with
25 Mr. McElroy?

1 A That's impossible.

2 Q Okay. I mean, I'm just trying to
3 understand the deal with you guys. We're making
4 this very, very difficult.

5 MS. SPERRY: He's already testified he
6 doesn't know. So he can't --

7 Q (By Mr. Barnes) Okay. I'm going to ask
8 you about each one of these again, and we'll sit
9 here all night.

10 MS. SPERRY: I'm going to ask you not to
11 throw documents at my client.

12 MR. BARNES: I'm going to set --

13 MS. SPERRY: It's unnecessary.

14 (Exhibits Numbers 45 through 47 were
15 marked.)

16 Q (By Mr. Barnes) -- 45, 46, and 47, all of
17 those. So let's go through them one at a time.

18 A Okay.

19 Q Tell me what you remember about 45.

20 A I don't.

21 Q You don't remember anything?

22 A No.

23 Q Do you remember signing it?

24 A Possibly.

25 Q Possibly.

1 A When was this? When was this?

2 MS. SPERRY: If it helps, it tells you
3 who are the parties are in the top paragraph.

4 THE WITNESS: No, I'm looking for a
5 date.

6 MS. SPERRY: Oh, the date for the
7 signature page? That's where the exhibits
8 start.

9 THE WITNESS: Yeah, this -- I was in the
10 middle of quarantine, like a military
11 lockdown, quarantine lockdown during this
12 time. So I don't remember. I had other
13 things on my mind in my life going on that
14 were a lot more important than this.

15 Q (By Mr. Barnes) Okay. When did you get
16 back to the U.S.?

17 A April 20 something.

18 Q April 20 something?

19 A Uh-hmm.

20 Q Okay. Let's look at Exhibit 47.

21 A Yes.

22 Q What do you remember about that one?

23 MS. SPERRY: The first page will tell
24 you who the parties are.

25 THE WITNESS: This is recent. We

1 haven't received --

2 Q (By Mr. Barnes) The question is: What do
3 you remember about this one?

4 A That I signed it.

5 Q Okay. So how much are you getting --
6 what's the total amount?

7 A I don't know. I haven't received any
8 money from this one yet.

9 Q Okay. What is -- so what's your
10 understanding of how much you're going to get from
11 this?

12 A I won't know until I receive it.

13 Q So you signed a deal that you -- and you
14 have no idea how much you're going to receive?

15 A On this one?

16 Q Look at Paragraph 1. It says the total
17 payment is \$6,300. Do you see that?

18 A Uh-hmm.

19 Q So you signed and agreed along with Mr.
20 McElroy to settle for \$6,300. So how much of that
21 \$6,300 are you getting?

22 A I don't know. I'd be perjuring myself
23 if I even tried to guess right now.

24 Q Then why did you sign the document?

25 A Because I knew I was getting money.

1 Q Okay. Is that why you -- that's why you
2 agreed to do the photos, because you were getting
3 money?

4 A Part of it.

5 Q Okay. So you didn't -- so it's possible
6 that back when you made the photo agreement you
7 didn't actually have the -- a solid and detailed an
8 agreement as you think; right?

9 MS. SPERRY: Objection.

10 A I never said that. I never said that.

11 Q Okay. So all those settlement
12 agreements that we're looking at right now, they all
13 came about because letters were sent by your
14 attorney --

15 A Correct.

16 Q -- demanding payment that you believe
17 that you were entitled to?

18 A Correct.

19 Q Okay. And later on if the court was
20 found -- if it was found that CAE has a license and
21 they had the right to send those photographs, would
22 you agree that you would not -- you would not be
23 entitled to that money?

24 MS. SPERRY: Objection.

25 MR. BARNES: On what grounds?

1 MS. SPERRY: It calls for a legal
2 conclusion.

3 Q (By Mr. Barnes) Why were you getting paid
4 under Exhibit 47? Why are they paying you?

5 A Infringement.

6 Q Infringement. And how -- how was it you
7 were fringed on?

8 A Per this letter, yeah.

9 Q The infringement was then publishing
10 photos without your permission?

11 A (Nodding.)

12 Q But if you had gave CAE permission to
13 distribute these photos --

14 A I never gave them permission.

15 Q But you don't -- I'm just asking. Down
16 the road if it's determined that they had permission
17 to publish the photos, they published them, and you
18 request money for infringement, they -- you
19 hadn't -- there was no infringement in that case.
20 Is that correct?

21 MS. SPERRY: Objection. What's the
22 question?

23 (Exhibit Numbers 31 through 34 and 36
24 through 43 were marked.)

25 Q (By Mr. Barnes) Let's just move on,

1 please. All these -- take a look. Take a look.

2 It's Exhibits 30, 31, 32, 33, 34 -- I believe 35 is
3 already out -- 36, 37, 38, 39, 40, 42 -- 41, 42 and
4 43.

5 So just take a look and see if you --
6 the question is if you know -- if those all seem
7 like they were letters that you authorized to be
8 sent out to the various publications.

9 A I believe these look familiar.

10 Q Okay. And those -- you would agree that
11 those are all letters that were sent out demanding
12 payment for infringement that you are alleging?

13 A Yes.

14 (Exhibit Number 8 was marked.)

15 Q Okay. Okay. I want you to take a look
16 at what's marked as Exhibit 8. That's a document
17 that you provided to us in discovery. Do you
18 recognize that?

19 A Am I in the blue or what?

20 Q Well, actually it looks like -- is that
21 a picture of you at the top? It says "Maybe:
22 Brian."

23 A Uh-hmm.

24 Q So looking at Page 1, somebody in the
25 blue on the right says, "Got asked to shoot for Real

1 Housewives of Atlanta Friday. BTS. What do I
2 charge?"

3 So do you think that was Mr. McElroy or
4 you? Do you know?

5 A I'm not sure.

6 Q You're not sure?

7 A It could be McElroy. I don't know.

8 Q Okay. Do you know of anyone else --
9 look at this correspondence in general. Do you
10 remember any of this?

11 A That's my link. But I don't remember
12 this conversation.

13 Q You don't remember this?

14 A Uh-hmm.

15 Q Will you look at the one that says July
16 26th, 2019? It starts on the third page. Somebody
17 says, "Can I catch a ride to the job today?" Do you
18 have any idea -- were you asking Mr. McElroy to
19 catch a ride or was he asking you? Does this
20 refresh your memory at all?

21 A No.

22 (Exhibit Number 10 was marked.)

23 Q Okay. Then we can move on. Let me show
24 you what's marked as Exhibit 10, which is another --
25 do you recognize that?

1 A Yes.

2 Q What is it?

3 A It's when I reached out to the publicist
4 or the person who wrote the CNN article.

5 Q When did you do that?

6 A I don't know.

7 Q You don't know?

8 A After -- obviously after this was
9 printed or published, but I don't know when exactly.

10 Q What was the purpose of reaching out to
11 that person?

12 A Trying to get more business.

13 Q Do you say in this message, hey, that's
14 my photo, I own it, why are you publishing it?

15 A That's where I wanted to lead that to.

16 Q I thought you just said a second ago
17 that you were trying to get more business?

18 A Yeah. I can do both.

19 Q Okay. So can you point to where you
20 made any objection to that photo being used?

21 A Well, I hadn't yet. She hadn't received
22 the letter. I didn't want to go in guns blazing,
23 so --

24 Q Okay. So what -- did you ever actually
25 have any -- did Ms. France ever respond to you?

1 A No, this -- no, she didn't even receive
2 it.

3 Q Okay.

4 A So I pursued it no further.

5 Q Okay. So what do you mean by you didn't
6 want to go in guns blazing?

7 A Well, I mean, if I eventually wanted to
8 ask her to change the name on something, I'm going
9 to get more bees with sugar than vinegar.

10 Q Well, why didn't you ask CAE to have the
11 name changed?

12 A I don't know who CAE is. I know
13 Courtney.

14 Q You knew Courtney. Why didn't you ask
15 Courtney?

16 A I didn't have her contact information.

17 Q Why didn't you ask Mr. McElroy for her
18 contact information?

19 MS. SPERRY: Objection. Asked and
20 answered.

21 Q (By Mr. Barnes) Okay. How much did you
22 get paid for the job?

23 A I don't know. I don't know.

24 Q You don't know how much you got paid?

25 A No. No.

1 Q Okay. So you don't know how much you
2 got paid. You don't know which messages are you in
3 the text messages.

4 A No, I said that these -- that that was
5 my link. I told you that that was my link at the
6 end. Obviously that was sent to me.

7 Q Okay.

8 A So don't put words in my mouth.
9 (Exhibit Number 1 was marked.)

10 Q Okay. I just want to go through what's
11 marked as Exhibit 1, which is the complaint. Let's
12 start with Paragraph 7. In Paragraph 7 --

13 A Yeah.

14 Q -- you said that you have garnered
15 widespread commercial success. So please tell me
16 about your widespread commercial success.

17 A Well, I've been doing photography since
18 I was in sixth grade. So I entered contests with a
19 35-millimeter Minolta and I've been taking photos
20 ever since.

21 Q Okay. Have you won any awards for that?

22 A I did win an award for a photo for Anna
23 Ruby Falls when I was like 12, so --

24 Q Was it published commercially?

25 A I'm not sure. That was so long ago.

1 Q Well, what did you mean by widespread
2 commercial success?

3 A Well, I mean, that just stems from --
4 commercial work could be headshots for a business,
5 you know, working with Verizon Wireless. I've
6 worked with AT&T. I've worked with some of the
7 Fortune --

8 Q Okay.

9 A Nothing as glamorous as People, but --

10 Q So it says here that you worked as an
11 independent -- Paragraph 8, you work as an
12 independent contractor for Night Owl. Is that true?

13 A With Night Owl.

14 Q Well, here it says you work as an
15 independent contractor for them. So that's a
16 mistake in the complaint?

17 A I guess --

18 Q It's okay if it is. I'm just asking --
19 trying to understand.

20 A Because we work with them.

21 Q You work with them?

22 A (Nodding.)

23 Q Paragraph 16 says that they're wholly --
24 that the copyrighted works are original,
25 exclusive -- you're the exclusive owner of all

1 rights, title and interest.

2 So nobody else has any right, title or
3 interest in any of the photos marked F-1 to F5?

4 MS. SPERRY: Objection. I think that
5 calls for a legal conclusion.

6 Q (By Mr. Barnes) Well, what does that mean
7 to you then? What --

8 A This just looks like standard copyright.

9 Q So F-1, who has the rights to use F-1 as
10 we sit here today?

11 A I do.

12 Q Who else?

13 A I'm not sure what the stipulations were
14 with some of these other cases, so I don't know. I
15 know for certain I do.

16 Q Okay. So you do. But you don't know
17 who -- you don't know who has the right to your
18 photographs?

19 A Well, yeah, because -- I mean, I don't
20 know if we made -- what arrangements were made with
21 some of these settlements.

22 Q So you gave -- you don't know what you
23 did with your -- so you're saying you settled the
24 case for an amount of money that you didn't know how
25 you're going to receive and you don't know what

1 terms and conditions there were for these
2 photographs. So you might not even own them at all.

3 MS. SPERRY: Objection. That's not his
4 testimony.

5 Q (By Mr. Barnes) So let me -- your head
6 was taking, so let's make sure I get that.

7 A I had to, like, pop my neck.

8 Q No. I just want to make sure you're
9 saying like either yes or no out loud because the
10 court reporter can't --

11 A If I'm shaking my head it's -- I'm just
12 absorbing what you're saying. I'm not answering a
13 question.

14 Q So your testimony is that as you sit
15 here you do not -- you don't know who has the
16 rights -- you don't know all of the people who have
17 rights to F-1 and what rights they have?

18 A Correct.

19 Q What about F-2?

20 A The same.

21 Q F-3.

22 A The same. The same for all.

23 Q Okay. Paragraph 19 says, "The
24 copyrighted works are of significant value."

25 So how much are F-1 through F-5 worth?

1 Give me a price on F-1.

2 A I mean, I leave that up to the judge to
3 see what they say.

4 Q The same for F-2, for the rest of them?

5 A For all of them, yes.

6 Q Okay. So how -- so a judge is in a
7 better position to value your work than you are?

8 A This is what we hired, you know, counsel
9 for is to have them educate us on what the worth is
10 based on the infringement.

11 Q Well, what's it worth to you?

12 A I seek to legal for that.

13 Q Okay. Do you plan on bringing any
14 claims against Mr. McElroy?

15 A No.

16 Q Did you make any agreement with Mr.
17 McElroy for why you wouldn't bring claims against
18 him?

19 A I'm sorry. What?

20 Q Do you have any agreement with Mr.
21 McElroy for why you would not bring any claims
22 against him?

23 A I'm afraid I don't understand the
24 question.

25 Q You're upset that your name wasn't

1 attached to the photos. But Mr. McElroy was the
2 person that made that happen.

3 MS. SPERRY: Objection.

4 Q (By Mr. Barnes) You're upset.

5 MS. SPERRY: He didn't testify to that.

6 That's not his testimony.

7 Q (By Mr. Barnes) Your testimony was that
8 you're upset because your name wasn't attached to
9 the photos. I showed you some text messages where
10 it shows you why it's not attached to the photos.
11 And the reason why I -- according to me and the
12 texts that were sent was Mr. McElroy made it that
13 way.

14 MS. SPERRY: Objection. That's your
15 testimony.

16 Q (By Mr. Barnes) Okay. So you hold Mr.
17 McElroy not responsible at all for any of -- any of
18 your losses?

19 A I've already answered that question.

20 Q Okay. What are your damages?

21 A I seek to counsel for that question.

22 Q You seek -- so you don't know how -- how
23 have you been damaged?

24 A I don't know how much they've wracked up
25 in legal fees. I don't -- I don't know any of it

1 right now. I'm -- I just got back into the country
2 not long ago, like I'm still working on --

3 Q You got back in the country in April?

4 A Yeah. I did, but I wasn't planning --

5 Q You were gone for six months and --

6 A Yes, I sold my car, sold my entire life.
7 I was planning to be there for several years, and I
8 came back because of COVID.

9 Q Okay.

10 A So, yeah. And I had to restart my life
11 again coming back, and I'm still doing that. So --

12 Q Okay. So you have no idea --

13 A I don't know if you've ever moved out of
14 the country, but it's kind of difficult.

15 Q So you have no idea what your damages
16 are?

17 A No.

18 Q And you have no -- how much do you owe
19 your lawyers right now?

20 A No clue.

21 Q What's the deal with the lawyers?

22 MS. SPERRY: Objection. Asked and
23 answered.

24 Q (By Mr. Barnes) You don't -- you have no
25 clue --

1 MS. SPERRY: Objection. Asked and
2 answered.

3 Q (By Mr. Barnes) -- how they're going to
4 be compensated?

5 MR. BARNES: I mean, I'm asking these
6 over and over again because --

7 MS. SPERRY: He's already -- and he's
8 already testified he doesn't know. He doesn't
9 know the arrangement. He doesn't know how
10 much he's spent.

11 MR. BARNES: So I'm not going to be
12 getting an affidavit from you guys later on
13 when I file summary judgment stating --

14 MS. SPERRY: Your client has no idea how
15 much she's paid you similarly.

16 MR. BARNES: Yeah, I understand that.
17 But we just have a whole lot of "I don't
18 knows" here and I don't want to --

19 MS. SPERRY: So did your client.

20 MR. BARNES: -- have to deal with coming
21 back here later because all of a sudden
22 everything is clear.

23 MS. SPERRY: Likewise. Likewise.

24 MS. AJINCA: You were allowed to ask me
25 multiple times without objection.

1 Q (By Mr. Barnes) Okay. In the document
2 requests, I asked you --

3 (Exhibit Number 4 was marked.)

4 Q I'm going to show you Exhibit 4. Did
5 you ever see that before?

6 A Possibly.

7 Q Well, take a look at it. I mean, these
8 are the document requests that I sent through your
9 lawyer asking you to produce certain documents.

10 A Okay.

11 Q So did anyone say, please produce these
12 documents to you? Did anyone ever ask you to gather
13 the documents requested?

14 A Yeah, I was asked to -- to gather
15 certain documents.

16 Q Okay. Did you get everything that was
17 on that list or anything you could?

18 A No. I replaced -- well, yeah,
19 everything I could that I had via social media. But
20 anything that was on my phone I replaced before I
21 moved to South America, so --

22 Q Okay. So what -- anything that you have
23 that you need to add that you might not have
24 attached? Anything that comes to mind --

25 A Not that I'm aware of.

1 Q -- that you found? Okay. So you said
2 social media. You -- or you said that you replaced
3 your phone, so no text messages. Were there any
4 text messages between you and CAE or Courtney?

5 A (Nodding.)

6 MS. SPERRY: Answer verbally.

7 THE WITNESS: Oh. No, sorry.

8 MR. BARNES: Okay. Just give me minute
9 here to talk to her.

10 (Recess.)

11 MR. BARNES: All right. I believe that
12 is the end of our questions.

13 MS. SPERRY: I have just actually a
14 couple of followups.

15 Is the court reporter ready?

16 DIRECT EXAMINATION

17 Q (By Ms. Sperry) Do you have an employment
18 agreement with McElroy?

19 A No.

20 Q And you don't consider him your
21 employer, do you?

22 A Absolutely not.

23 MS. SPERRY: That's all the questions I
24 have.

25 (Deposition concluded at 5:57 p.m.)

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DISCLOSURE

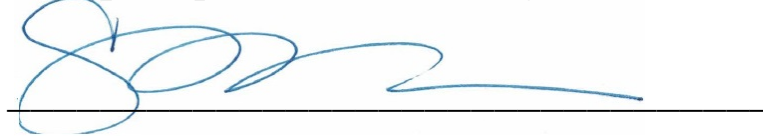
STATE OF GEORGIA
COUNTY OF FULTON

DEPONENT: BRYAN FLORES

Pursuant to Article 10.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure.

I am a Georgia Certified Court Reporter. I am here as an independent contractor for Alderson Court Reporting. Alderson Court Reporting was contacted by the offices of Marcy L. Sperry, Esquire, to provide court reporting services for this deposition. Alderson Court Reporting will not be taking this deposition under any contract that is prohibited by O.C.G.A 9-11-28 (c).

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CARLA J. HOPSON, CCR# B-1816
July 13, 2020.

C E R T I F I C A T E

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing deposition was taken down, as stated in the caption, and the colloquies, questions and answers were reduced to typewriting under my direction; that the foregoing transcript is a true and correct record of the evidence given.

The above certification is expressly withdrawn and denied upon the disassembly or photocopying of the foregoing transcript, unless said disassembly or photocopying is done under the auspices of Alderson Court Reporting, Certified Court Reporters, and the signature and original seal is attached thereto.

I further certify that I am not a relative or employee or attorney of any party, nor am I financially interested in the outcome of the action.

This, the 13th day of July, 2020.



CARLA J. HOPSON, RPR
Certified Shorthand Reporter
B-1816

Notice Date: 07/15/2020

Deposition Date: 7/8/2020

Deponent: Bryan Flores

Case Name: Nicholas McElroy v. Courtney Ajinca Events
LLC

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CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

Signature of Deponent

I hereby certify that the individual representing himself/herself to be the above-named individual, appeared before me this _____ day of _____, 20__, and executed the above certificate in my presence.

NOTARY PUBLIC IN AND FOR

County Name

MY COMMISSION EXPIRES: